

DENIED
WITHDRAWN

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

Dec 14, 2016



CHARLES E. RENDLEN, III
UNITED STATES BANKRUPTCY JUDGE

In re:)
)
PATRICIA LEONARD,) Case No.: 16-40538-705
Movant/Debtor,)
) Chapter 7
vs.)
)
WAYCLIFFE DEVELOPMENT CORP.,)
Serve: Michael P. Siebert, 999 Executive)
Parkway Drive, #301, St. Louis, MO 63141)
)
Respondent/Creditor.)

**NOTICE AND MOTION TO AVOID JUDICIAL LIEN OF WAYCLIFFE DEVELOPMENT
CORPORATION**

PLEASE TAKE NOTICE: ANY RESPONSIVE PLEADING IN OPPOSITION TO THIS MOTION MUST BE FILED IN WRITING NO LATER THAN TWENTY-ONE (21) DAYS FROM THE DATE OF SERVICE OF THIS MOTION AS SHOWN ON THE CERTIFICATE OF SERVICE. THE RESPONSE MUST BE IMMEDIATELY SERVED UPON THE UNDERSIGNED AND UPON ALL CREDITORS AND PARTIES IN INTEREST WHO WERE SERVED WITH THIS MOTION PURSUANT TO THE LOCAL RULES OF BANKRUPTCY PROCEDURE. THE COURT MAY GRANT THE MOTION WITHOUT FURTHER NOTICE TO ANY PARTY UPON EXPIRATION OF THE RESPONSE PERIOD IF NO RESPONSE IS FILED.

IF A RESPONSE IS FILED, THE MOVANT SHALL SET THE MATTER FOR HEARING AND PROVIDE NOT LESS THAN FOURTEEN (14) DAYS WRITTEN NOTICE THEREOF TO THE RESPONDENT AND TO ALL CREDITORS AND PARTIES IN INTEREST SERVED WITH THE RESPONSE.

1. Debtor, Patricia Leonard, commenced this case on January 27, 2016 by filing a voluntary petition for relief under Chapter 7 of the United States Bankruptcy Code.
2. The Court has jurisdiction pursuant to 28 U.S.C. Sec. 1334 to avoid and cancel the judicial lien held by Waycliffe Development Corporation (hereinafter "Waycliffe") on real property of the Debtor pursuant to 11 U.S.C. Sec. 522(f).
3. On or about November 16, 2011, Waycliffe obtained a judgment against the Debtor and obtained a lien against the Debtor's real property located at 614 Grant Court, Saint Louis, MO 63119 of which the legal description is Lot 2 of Grant Court, a subdivision in St. Louis, County, Missouri, as per plat thereof recorded in Plat Book 251, Page 95 of the St. Louis County Records. The judgment is entered of record in Waycliffe Development Corporation vs. Patricia Leoanrd et al., 2107CC-03068 in the Circuit Court of Saint Louis, County in the State of Missouri, Division 7.

The amount of the judgment is \$79,820.77 plus court costs and attorneys' fees, which constitutes the amount of the lien.
4. The fair market value of the real estate owned by Debtor and subject to the judicial lien is \$330,000.00.
5. The Debtor claims an exemption in the property referred to in the preceding paragraph in the amount of \$15,000.00.
6. At the time Debtor filed this bankruptcy petition, this real estate was subject to consensual mortgage lien(s) and other liens in the amount of
7. At the time Debtor filed this bankruptcy petition, the Creditor's judicial lien secured an indebtedness in the amount of \$79,820.77.
8. The existence of the Waycliffe lien on Debtor's real estate impairs exemptions to which the Debtor would be entitled under 11 U.S.C. Sec. 522(b). The applicable formula as set forth in Kolich v. Antioch Laurel Veterinary Hospital Inc. (In re Kolich), 273 B.R. 199 (B.A.P. 8th Cir. 2002) *aff'd* 328 F.3d 406 (8th Cir. 2003) is:

<i>Creditor's Judicial Lien</i>	<u>\$79,820.77</u>
<i>Plus all other liens</i>	<u>\$424,000.00</u>
<i>Plus exemptions</i>	<u>\$15,000.00</u>
<i>Total</i>	<u>\$518,820.77</u>
<i>Minus value of land interest absent liens</i>	<u>\$330,000.00</u>

<i>Extent of Impairment</i>	<u>\$188,820.77</u>
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9. The extent of impairment exceeds the amount of the Creditor's judicial lien so that the entire judicial lien should be avoided.

WHEREFORE, Debtor prays for an order against Waycliffe Development Corporation avoiding and canceling the judicial lien in the above-mentioned property to the extent of the lien impairs Debtor's exemptions, and for such additional or alternative relief as may be just and proper.

Respectfully submitted,

/s/ Frank R. Ledbetter

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CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the above was sent either electronically or by U. S. Mail, First Class postage pre-paid the following parties on this 1st day of June 2016:

Office of the U. S. Trustee
111 S. 10th Street, Suite 6353
St. Louis, MO 63102

E. Rebecca Case
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Michael P. Siebert
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Registered Agent for Waycliffe Development Corporation

/s/ Frank R. Ledbetter